



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1866**

July 24, 2012

By Electronic Mail

William H. Hyatt, Jr., Esq.
K&L Gates LLP
One Newark Center, Tenth Floor
Newark, NJ 07102-5285

Re: Diamond Alkali, Lower Passaic River Study Area – River Mile 10.9
Administrative Settlement Agreement and Order on Consent for Removal Action
USEPA Region 2 CERCLA Docket No. 02-2012-2015

Dear Mr. Hyatt:

On July 23, 2012, Occidental Chemical Corporation ("Occidental") submitted to the U.S. Environmental Protection Agency ("EPA") a notice of intent to comply with Unilateral Administrative Order ("UAO") 02-2012-2020, issued under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9606(a).

Accordingly, EPA anticipates that Occidental will make a good faith offer to the Settling Parties that are signatories to Administrative Settlement Agreement and Order on Consent for Removal Action ("AOC") 02-2012-2015. Under the UAO, Occidental must provide EPA with a copy of its good faith offer. We have also indicated to Occidental that EPA should be kept informed of its subsequent discussions with the Settling Parties. Further, to facilitate the process of reaching agreement on the participation of Occidental in the removal action EPA plans to meet with the Settling Parties and Occidental.

To arrive at our common goal of the efficient performance of the removal action at RM 10.9 with the participation and cooperation of Occidental, EPA will look for a similar cooperative effort from the Settling Parties.

Typically, when EPA enters into an AOC and concurrently issues a UAO requiring the UAO recipient to participate and cooperate with the parties performing pursuant to the AOC, EPA includes in the AOC language reflecting that the AOC parties have a reciprocal obligation to cooperate with the UAO recipient. Under the particular circumstances surrounding the negotiation of the AOC for the RM 10.9 removal action, EPA did not include this language in the AOC. Nevertheless, for Occidental to be able to comply with the UAO, the Settling Parties

will have to make their own best efforts to coordinate with Occidental to conduct the work required under the AOC. We would like the Settling Parties to confirm that they will, at a minimum:

- Undertake good-faith consideration of any good-faith offer to perform or pay for work required by the AOC submitted by Occidental;
- Reply in writing to any offer by Occidental as soon as reasonably possible, but no later than within 30 days of receipt of the offer; and
- Engage in good-faith negotiations with Occidental.

We look forward to receiving confirmation from the Settling Parties that they are willing to undertake these efforts; and to working with both Occidental and the Settling Parties on the RM 10.9 removal action.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sarah P. Flanagan". The signature is fluid and cursive, with the first name "Sarah" being more prominent.

Sarah P. Flanagan
Assistant Regional Counsel

cc: R. Basso, ERRD
S. Vaughn, ERRD
P. Hick, ORC